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Humanitarian Policy Branch
Department of Immigration and Border Protection
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Submission to Australia's Humanitarian Program 2015-16 and Beyond

Prepared by the Secretariat of the Federation of Ethnic Communities' Councils of Australia with assistance from the Multicultural Council of Northern Territory and the Ethnic Communities' Council of Victoria

The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to make a submission on the size, management and composition of Australia's Humanitarian Program 2015-16 and commends the Government for its ongoing community engagement on this issue. The success of the program relies on input from grassroots organisations and refugee communities who are best placed to ensure that the lived experience and needs of those seeking refuge in Australia are well understood.

FECCA is the national peak body representing Australians from culturally and linguistically diverse backgrounds. FECCA provides advocacy, develops policy, and promotes issues on behalf of its constituency to the Australian Government and the broader community. FECCA supports multiculturalism, community harmony, social justice and the rejection of all forms of discrimination and racism, so as to build a productive and culturally rich Australian society. We recognise the value of immigration and multiculturalism and we believe that a humanitarian response to the situations of those seeking in asylum in our country—and one that does not generate fear and distrust in the community—is crucial if we are to build a socially cohesive and inclusive Australian society into the future.

In submitting our comments on the Program, FECCA endorses the submission made by the Refugee Council of Australia (RCOA) following a broad community consultation process.

FECCA seeks to reiterate its position on key aspects of the Humanitarian Program and the Australian Government's obligations as a signatory of the 1951 United Nations Convention and the 1967 Protocol Relating to the Status of Refugees (the Refugee Convention). FECCA believes that the

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Humanitarian Program should be based on a series of complementing principles which will ensure that the Program:

- aims to foster social cohesion, inclusion and community harmony;
- meets Australia's international obligations under a series of human rights conventions including the Refugee Convention;
- has a proactive approach and is responsive to changing global circumstances and needs for resettlement;
- has the preservation of family unity as its core objective;
- encourages and pursues permanent resettlement at the expense of temporary protection;
- pro-actively seeks to improve regional cooperation and to identify viable solutions for protracted situations of displacement in the Asia-Pacific region.

FECCA also reiterates its strong stance against offshore processing and its opposition to the Australian Government's decision to deny asylum seekers who arrived by boat and are found to be refugees the right to be resettled to Australia.

As in previous years, FECCA has considered the issues in the Department's Information Paper in terms of our own core business which is the creation of sustainable, cohesive and inclusive cultural communities. FECCA encourages the Humanitarian Program to be instilled with a longer term vision which can foster practical opportunities for humanitarian entrants to belong, contribute and participate in Australian society, all the while being supported by strong government services which understand their settlement needs.

Australia's International Legal and Human Rights Obligations

As a signatory to the Refugee Convention, Australia has agreed to ensure that asylum seekers and refugees have the right to enter a country for the purposes of seeking asylum, regardless of how they arrive or whether they hold valid travel or identity documents. Article 33 of the Convention compels the signatory states not to return a refugee to a place where his or her life or freedom would be threatened, on account of his or her race, religion, nationality, membership of a particular social group or political opinion. In this context, Australia has related obligations under international law to ensure that adequate protection is awarded to individuals seeking refuge and asylum on Australian shores. This remains valid despite the Australian Government's interpretation of its obligations to ensure the safety of asylum seekers, which allows for sending them to a third country for processing and resettlement.

FECCA and its members are very concerned that the Information Paper fails to address potential strategies for resolving the status of asylum seekers still in offshore and onshore detention facilities.

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The Information Paper also continues to use the dichotomy 'lawful-unlawful arrival' and the term of illegal maritime arrivals, which continues to be of concern, as it perpetuates the factually incorrect belief that seeking asylum is illegal. As previously highlighted, FECCA strongly opposes the use of the terms 'illegal' and 'queue jumping' as a threat to social cohesion and community harmony, as we believe that these terms have the potential to create dissent, incite hatred and fear.

In light of this, the Humanitarian Program should not ignore the plight of those who are seeking protection on Australia's shores in an attempt to create the illusion that their humanitarian needs and claims to protection are less deserving or less of a priority. Refusing to grant permanent settlement to those asylum seekers found to be genuine refugees, based solely on their mode of arrival, constitutes an inhumane and unnecessary punitive measure which places Australia at odds with the founding principles of the Refugee Convention and Australia's human rights obligations.

Additional strategies to address protection needs

FECCA supports the alternative strategies proposed by RCOA in their submission to address the global protection needs, including an increase in the Australian overseas aid program, multilateral engagement and regional cooperation.

FECCA agrees that Australia's overseas development aid has a vital role in mitigating the factors that generate forced displacement, and should be directed towards improving conditions in countries of origin for asylum seekers, as well as in countries of asylum. Overseas aid should target countries hosting large populations of displaced people and assist them in providing adequate protection, assistance and access to education and health care.

Australia should take on a leadership role and channel its diplomatic efforts towards improving regional cooperation on the refugee protection in Asia-Pacific, while also genuinely promoting the safety and human rights of those seeking asylum. Australia should place greater focus on working with the region's key stakeholders to establish workable regional arrangements to ensure safer ways to seek protection and process the small number of vulnerable people who do arrive in Australia by boat onshore.

Program numbers

FECCA strongly supports a non-discriminatory Humanitarian Program that is responsive to refugee situations across the world and meets the growing global needs for resettlement. FECCA is disappointed to see that despite current statistics released by the Office of the United Nations High Commissioner for Refugees (UNHRC) stating that the number of forcibly displaced people is now at the highest level since World War II, the Australian Government has decided to reduce its Humanitarian Program to

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13,750 places. FECCA welcomes the announced gradual increase over the next couple of years; however FECCA believes that the proposed numbers do not correspond to the current humanitarian crisis situations around the world, including the most recent ones in Syria and Iraq.

Humanitarian entrant visas should continue to be determined on a case-by-case basis with close reference being made to the provisions of the Refugee Convention. The Humanitarian Program should balance its focus between those refugees from areas of protracted displacement and emerging devastating humanitarian crises, those people with the greatest need of resettlement and those refugees with family/community connections in Australia. FECCA and its members believe that the size and composition of the Humanitarian Program should be based on protection requirements, the advice of the UNHCR and an objective and responsive global assessment of circumstances and needs, and not on perceptions of integration capacity or domestic political considerations.

FECCA remains concerned about the ongoing numerical linkage of the Special Humanitarian Program (SHP) with the onshore refugee program. FECCA has strongly asserted that the onshore protection framework should operate independently from the rest of the Humanitarian Program being flexible and responsive to onshore settlement needs as they arise. The linkage of the two programs causes conflicts within some communities as it works to create the perception that boat arrivals somehow deprive others going through alternative processes of their opportunity to attain protection.

Feedback from FECCA's members has been consistent with community views gathered by RCOA which highlighted that the settlement sector had positively responded to the increased intake under the 2012-13 Humanitarian Program by increasing its capacity to absorb a larger number of humanitarian entrants. The sudden reduction of the applicants accepted in the Program over the following periods has resulted in a significant loss of the investment made in the settlement services sector. This reduction had the potential to disproportionately impact on settlement services provision in smaller or emerging resettlement areas. The case study provided below illustrates some of the challenges that changing settlement patterns pose to these areas.

Similar concerns have been expressed with regard to the numbers of visas granted under SHP. Despite welcoming the increase in SHP visas as a means to explore additional family reunion opportunities, service providers are concerned that the fluctuating numbers and an increased focus on SHP resulted in a larger numbers of refugees and humanitarian entrants settling in the more established settlement areas. As RCOA highlighted in their submission, this resulted in inconsistencies in settlement patterns which made advance planning for absorbing program intake very difficult, if not impossible.

Case study - Darwin

The Northern Territory has small dispersed populations of recently-arrived communities and this presents challenges for the cost-effective delivery of settlement services. Darwin does not enjoy the economies of scale that accrue for larger aggregated refugee communities in southern metropolitan settlements. Furthermore, successful and sound settlement outcomes for the Northern Territory are impacted by the pattern of secondary migration movements and push-pull factors of eastern and southern states that compromise the maintenance of an effective critical mass for recently-arrived and emerging communities in Darwin and regional centres in the Northern Territory.

Local settlement service providers would argue that historically, the positive and productive settlement outcomes for humanitarian entrants in Darwin have been dependent on the maintenance of sustainable settlement service provision and an effective “critical mass” for the populations of recently-arrived and emerging refugee communities.

In Darwin, service providers are concerned that the drastic reduction of quotas of humanitarian entrants in the region could cause the forced redundancy of experienced and competent staff, and irreversible loss of their acquired skills and knowledge. Other adverse effects of oscillating program quotas cited by service providers in Darwin included an unwanted drift of clients from the city to southern centres with larger community populations and the loss of “critical mass” locally, impacting on the identity and viability for some smaller local refugee communities and the sustainability of settlement service providers.

Other concerns related to the dramatic increase of the SHP visa are related to a perceived shift in the responsibility to provide settlement support from the Government to the visa proposers and the settlement sector. This has raised concerns about the varying quality of support provided by the proposers as well the increased burden on the community sector to complement support where the one provided by proposers was inadequate or insufficient.

Family reunion

Family unity has a direct impact on successful settlement and an individual's mental health and general wellbeing. FECCA believes that families seeking asylum should, whenever possible, be kept together throughout the settlement process, and when this is not possible, family reunion should be facilitated through any means.

FECCA recognises the highly important role that SHP plays in facilitating family reunion and from this perspective it welcomes the increase in the number of SHP visas as an opportunity for more refugees and humanitarian entrants to reunite with their family members.

The program should be available to all humanitarian entrants in Australia, particularly minors, and regardless of their mode of entry. Barring refugees, including minors, who arrived in Australia by boat from applying for family reunion under the same program as all other humanitarian entrants, as well as introducing excessive restrictions against them, is punitive and discriminatory. Most of these people will have family members living overseas in extremely dangerous circumstances and the stressful situation of being unable to help their relatives is negatively impacting on their well-being. Their only option to flee would be through a family reunion visa but punitive measures and restrictions against this cohort only encourage more asylum seekers, especially women and children, to board boats to reunite with their family members already in Australia.

FECCA strongly urges the Australian Government to adopt a more humane approach to family reunion for refugees who have arrived by boat. Making family reunion available to these humanitarian entrants will provide them with the necessary social support and assurance that their loved ones are safe to allow them to get on with re-building their lives in Australia and become contributing members of society.

The restrictive definition of what constitutes family used by the program creates different challenges for those eligible to sponsor their family members under SHP. Family relations and responsibilities in some communities applying for family reunion are often significantly different from what is considered common in Australia. Many of these refugees come from collectivistic societies whereby cultural, religious, historical or traditional beliefs and practices dictate that family responsibilities go beyond close family members and include members of what is known in Australia as extended family. Being unable to fulfil their family responsibilities towards a dependent relative can negatively impact on the general wellbeing of the applicant and hinder their successful settlement.

Community Sponsorship Program

FECCA supports the notion of a privately sponsored humanitarian program, which would allow community groups and families to support the migration of those in need. The program allows for additional avenues for members of the community to reunite with their families and FECCA welcomes the extension of the program beyond its initial pilot stage. However, as noted in previous occasions, FECCA is concerned about the high fees associated with the current program which may preclude some groups from offering assistance, particularly those from smaller and emerging communities. Presently groups participating in the community sponsored SHP program need \$20,000 to \$30,000 to cover a two stage visa application fee to sponsor a family, which is a prohibitive cost for many small communities. This financial commitment must be reconsidered by the Government.

It is also disappointing to note that the allocation to this program of 500 places will be drawn from the existing allocation of the total 13,750

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humanitarian places, rather than as an additional allocation to the overall program, as would be a more appropriate scenario. As FECCA has previously contended, any private sponsorship program must also be delinked from the general humanitarian program, offering complimentary protection rather than reducing the scope and impact of the current program.

Reintroduction of Temporary Protection Visas (TPVs) and introduction of Safe Haven Enterprise Visas (SHEV)

FECCA strongly disagrees with the reintroduction of Temporary Protection Visas (TPVs) and highlights that this visa has previously been proved ineffective in achieving any of its stated objectives and does not provide a sustainable solution for refugees¹. TPVs are discriminatory, hinder settlement, disallow refugees the ability to establish themselves in a secure environment and access the full range of services that are necessary for successful settlement and have the potential to create a second-class of refugees. Despite allowing TPV holders access to a wide range of services, the temporary nature of the protection facilitated by this visa category along with the family reunion and travel restrictions associated with it, will not deliver sustainable settlement outcomes for individuals and will risk exacerbating psychological issues for refugees who are suspended in ongoing situations of uncertainty on the basis of their ongoing need to reapply for new protection each time a TPV expires.

FECCA warns that the consequences of punishing vulnerable groups as a deterrence measure for other people in precarious situations can only be detrimental and generate no benefits, while the lack of prospects of permanent settlement will affect social cohesion if TPV holders feel like they will never belong and are perceived as second-class refugees. All asylum seekers recognised as engaging Australia's protection obligations should be on a pathway to being granted permanent protection, be considered to be of equal status to humanitarian entrants, and be accorded full access to funded settlement services. The punitive nature of the TPV has the potential of creating a class of refugees vulnerable to entrenched institutionalised discrimination and negative public perceptions.

The introduction of SHEV raises a new set of concerns, including the lack of clarity about the proposed SHEV structure, how the conditions of the visa could put refugees at risk of exploitation, what type of settlement services would be available to them in the designated regional areas where they would need to relocate and the impact that dealing with trauma while having to secure employment and fulfil the onerous requirements of the visa will have on their mental and general well-being.

FECCA believes that there are opportunities for refugee and humanitarian settlement in regional areas however it must highlight its concern with regard

¹ As noted in its submission to Inquiry into the *Migration and Maritime Powers Legislation Amendment (Resolving the Legacy Caseload) Bill 2014*

to the prospect of regional settlement in locations that may lack the requisite infrastructure and support mechanisms to enable successful settlement. Recent arrivals that settle in rural and regional locations may face specific challenges such as limited availability or lower quality of services (particularly health and aged care, education, and transport services), poorer infrastructure, limited employment opportunities, and social and cultural isolation. FECCA cites the need for recognition of these issues and their propensity to undermine effective settlement opportunities and social inclusion under the proposed SHEV arrangement.

FECCA is concerned over the current lack of clarity or guarantee that the holders of SHEVs who would have demonstrated the capacity to contribute to the Australian society and economy and commit to work, study and decrease reliance on income support in “designated regional areas” with labour shortages, would in fact be able to apply for other mainstream substantive onshore visas – albeit not Permanent Protection Visas - to facilitate a pathway to eventual permanent residency. There is a lot of expressed scepticism and concern that the SHEV will provide a pathway to permanent residency for the majority of SHEV holders, especially because the legislation passed in December 2014 failed to define and provide this clearly. Community-based asylum seekers may find it difficult to apply for mainstream substantive visas through challenges in meeting the eligibility criteria, inability to pay high application fees, and lack of required English proficiency or recognised skills in demand.

Recommendations

1. Recognise the role of overseas aid in assisting forcibly displaced people, develop a strategy for ensuring that Australia’s diplomatic and aid efforts contribute towards improved protection and support refugees and asylum seekers in South-East Asia and South Asia, restore Australia’s overseas aid program to its former level and develop a plan to gradually increase overseas aid within the next years.
2. Immediately increase the Humanitarian Program to at least 20,000 per year, including a further increase to up to 30,000 places within the next five years, in view of an extremely high number of displaced persons globally.
3. That SHP entrants supported by proposers be considered of equal status to other humanitarian entrants, be assisted with the costs of travel to Australia, and be accorded full access to funded settlement services upon arrival in Australia.
4. Review the definition used to assess family reunion applications to include a broader meaning and to bring it in line with UNHCR guidelines, taking into consideration different understandings of what constitutes ‘family’ in various cultures.

5. Facilitate greater access to the Family Stream of the Migration Program, by reducing upfront fees and excessively constrictive eligibility requirements that in reality exclude applicants from refugee or humanitarian backgrounds.
6. Significantly reduce the upfront costs of the Community Sponsorship Program and ensure that in case of emergency or relationship breakdown applicants continue to have access to support services to make the Program more accessible to smaller community groups.
7. Conduct a public review and community consultations on the effectiveness of the Community Sponsorship Program.
8. Immediately abolish the TPV program and grant permanent protection to all asylum seekers engaging Australia's protection obligations in light of the ineffective nature of the program and the negative effects it has on vulnerable refugees
9. Ensure transparency and clarity about the structure of the SHEV program and the prospects of applying for permanent visas, provide sufficient publicly available information about the condition of the SHEV, the location of "designated regional areas" and the support structures available in these locations.

FECCA hopes that the perspectives provided above will inform the development of a more humane, non-discriminatory and responsive Humanitarian Program. FECCA is grateful for the opportunity to submit its comments for the Department's consideration and invites the Department to contact the FECCA Office on (02) 6282 5755 or at admin@fecca.org.au for further information.